

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

MICHAEL DAVID,  
Plaintiff,

v.

TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE, *et al.*,  
Defendants.

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Civ. No. CC-04-299

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION AND  
DISMISSING MOTION**

The United States Magistrate Judge filed her Memorandum and Recommendation on April 18, 2009 (D.E. 96). Plaintiff has filed no objections. Plaintiff seeks enforcement of a settlement agreement between himself and TDCJ. The settlement agreement was not attached to the joint motion to dismiss (D.E. 88). Additionally, it was not incorporated into the order of dismissal or the final judgment (D.E. 90, D.E. 91). This Court did not explicitly retain jurisdiction to enforce the settlement agreement (D.E. 90, D.E. 91).

The Magistrate Judge recommends that Plaintiff's motion be dismissed, as this Court does not have jurisdiction to enforce the settlement agreement. The Magistrate Judge cites the Fifth Circuit's decision in *Hospitality House, Inc., v. Gilbert*, 298 F.3d 424 (5th Cir. 2002). In that case, the Circuit Court held that a district court only has an independent jurisdictional basis to enforce a settlement agreement when that agreement has been made a part of the order of dismissal.

298 F.3d at 430. A settlement agreement is part of the order of dismissal if the court explicitly incorporates the terms of the agreement into the order, or includes a separate provision retaining jurisdiction over the settlement agreement. *Id.*

Neither of these were done in this case, and accordingly, this Court does not have an independent basis for federal jurisdiction, required to enforce the settlement agreement.

When no timely objection to the Magistrate Judge's Memorandum and Recommendation is filed, the Court need only satisfy itself that there is no "clear error" on the face of the record in order to accept the Magistrate Judge's recommendation. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir.1996) (citing FED. R. CIV. P. 72(b) advisory committee's note (1983)).

Having reviewed the pleadings and motions on file, the Court finds no clear error in the Magistrate Judge's recommendation. The Court accepts the Magistrate Judge's recommendation and DISMISSES Plaintiff's lawsuit without prejudice.

ORDERED this 29 day of May,  
2009.

  
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HAYDEN HEAD  
CHIEF JUDGE